

MARGARET W. CHIVERS

IBLA 75-376

Decided July 14, 1975

Appeal from a decision of the Associate Director, Bureau of Land Management, rejecting cash election application ES 14506 in satisfaction of a soldier's additional homestead right.

Affirmed.

1. Scrip: Payment in Satisfaction -- Scrip: Recordation -- Soldiers' Additional Homesteads: Generally

Transfers of scrip or selection rights which are presented to the Department of the Interior for recordation pursuant to the Scrip Recordation Act more than six months after they were made cannot be accepted for recording or serve as a basis for the acquisition of lands. An application to elect to receive cash rather than land, which is based upon a transfer of a soldier's additional homestead selection right filed more than six months after it was made, must be rejected.

2. Scrip: Payment in Satisfaction -- Scrip: Validity -- Soldiers' Additional Homesteads: Generally

Where an applicant to receive cash in satisfaction of a soldier's additional homestead selection right fails to establish a complete chain of title from the soldier-entryman to the applicant, a purported assignment of the right to the applicant cannot be recognized and the application must be rejected.

APPEARANCES: Margaret W. Chivers, pro se.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Margaret W. Chivers filed with the Bureau of Land Management (BLM) on December 17, 1974, an application for cash payment in satisfaction of a soldier's additional homestead right in accordance with section 4 of the Act of August 31, 1964, 78 Stat. 751, 43 U.S.C. § 274 nt. (1970). The Associate Director, BLM, rejected this application on February 3, 1975, from which decision this appeal is taken.

BLM stated two reasons for its rejection of appellant's application. The first was that appellant failed to file her assignment of the soldier's additional right from Collins Land Company within six months of its transfer to her, as required by section 2 of the Scrip Recordation Act of 1955, 69 Stat. 534, 535, 43 U.S.C. § 274 nt. (1970). Secondly, BLM rejected the application as invalid because of a gap in the chain of assignments.

On appeal, appellant has asserted that the date on the assignment, November 1, 1973, which she filed with her application, was a typographical error and that the correct date of the transfer to her was November 1, 1974, as part of the dissolution of Collins Land Company of which she was president. She also argues that the chain of assignments is demonstrated by various documents which she supplied, none of which, however, are the actual missing assignments.

[1] Both reasons given by BLM for rejecting the application were correct. The first reason concerning the untimely filing of the assignment for recordation was in accord with the Scrip Recordation Act. Section 2 of that Act requires transfers of scrip and selection rights to be presented to the Department of the Interior for recordation within six months after the transfer. Section 4 of that Act, 69 Stat. 535, provides that claims not presented for recordation as prescribed by the Act, "shall not thereafter be accepted by the Secretary of the Interior for recordation or as a basis for the acquisition of lands." The assignment was dated November 1, 1973, which was more than six months prior to the date it was submitted for recordation. The subsequent statutory provision for a cash election did not increase any rights which could not otherwise be recognized under the Scrip Recordation Act. Where an applicant could not establish a scrip or selection right which could otherwise be used as a basis for acquiring lands, he would have no right to receive cash. Therefore, BLM was required to reject the cash election application and to refuse to record the assignment.

Appellant now asserts, however, that the assignment was actually made and executed on November 1, 1974. She submits a letter from attorney Chadwick H. Smith to the same effect, indicating that the Collins Land Company was being dissolved in 1974 and the assets were transferred from the Company during October, November and December of 1974. She also submits a purported substitute assignment to her from the Collins Land Company, signed by her for the Company, with a date of November 1, 1974. This assignment is notarized by Chadwick H. Smith, stating:

On this 1st day of November, 1974, before me personally came Margaret W. Chivers, to me well known as the person who executed the foregoing assignment, and acknowledged the foregoing assignment to be his act and deed for the purposes therein named; and, being duly sworn, says the foregoing statements are true.

The original assignment has a similar statement except the date is given as the 1st day of November, 1973; added after Margaret W. Chivers' name is the title, President of the Collins Land Company; and the notary public is Robert C. Wolverton. Furthermore, accompanying this assignment and the cash election application is an application to record signed by Margaret W. Chivers, noting specifically that the scrip was transferred to her by the Collins Land Company, November 1, 1973. We have difficulty accepting appellant's explanation of the discrepancy regarding the dates, that there was only a typographical error, and particularly that she actually appeared before attorney Smith on November 1, 1974, as attested to in the substitute assignment. Further corroborating proof such as a statement from Notary Public Wolverton regarding the date of notarization of the original assignment document and copies of the business records of the Collins Land Company which would show when the transfer was made would be essential to overcome the date shown on the original assignment and on the application for recording it.

Such proof will not be sought because the application and the assignment are fatally defective for the second reason given by the BLM office, namely, that appellant has not shown a proper chain of title of the selection right to her. Nothing that appellant has submitted on appeal establishes a complete chain of title from the entryman to her. This is demonstrated by reviewing the facts shown in the record before us.

The amount of land claimed by appellant is 19 acres. It is part of a 120-acre soldier's additional homestead right which accrued to Hiram P. Swain under 17 Stat. 333, 43 U.S.C. § 274 (1970), for military service during the War Between the States. A subsequent

assignee, Harriet E. Rockwell, filed for entry with this right in 1898. Swain's right and the assignment to Rockwell were declared valid at that time (Duluth F.C. 2308, now Cass Lake 012850.) This entry was cancelled and the case closed on March 15, 1906, due to a prior railroad selection. The assignment papers were returned on March 27, 1918, to the Northern Lumber Company.

Subsequently, the Swain right apparently was assigned at least twice and then divided and further assigned as a 101-acre parcel and a 19-acre parcel. The 101-acre parcel was used in entry application Evanston 06726, filed by Ted E. Collins on July 7, 1918. This was rejected on January 21, 1922, and the papers returned to Collins. The 19-acre parcel was used in entry application Helena 021237 by Clifford W. Raw. This was rejected and whatever papers filed were returned to Raw. In neither of these filings were any assignments recorded.

On January 5, 1922, Raw apparently assigned the right to the 19-acre parcel to Ted E. Collins. 1/ Therefore, during January 1922, Ted E. Collins apparently had been assigned the entire Swain right and possessed all the assignment papers.

On November 7, 1924, Ted E. Collins filed entry application Helena 024026 (now Great Falls 063212) using 19 acres of the Swain

1/ This date appears in letter "K", Helena 024026, infra. Documents submitted by appellant do not clearly set forth when Ted E. Collins or Collins Land Company first obtained the assignment of the entire 120 acres. A file memorandum, submitted by appellant and dated June 29, 1918, states that the Swain right was purchased from one Edwin W. Spalding, assignee of Northern Lumber Company, on June 6, 1918, through the Washington office of Collins Land Company. It also shows that Spalding assigned 120 acres to C. C. Gillis on April 26, 1918, that Gillis assigned 101 acres to Ted Collins (no date) and assigned 19 acres in black on June 28, 1918. Gillis is not further identified. An undated file memorandum, which appellant suggests was written in 1929 or 1930, states that in November 1919, the Helena office of Collins Land Company "sold 19 acres of this right to Eugene L. Parker and application made by T.E.C. under 021237 Helena," which Department records show as the Raw application. A copy of a letter from the Washington office of Collins Land Company to its Helena office, dated February 15, 1939, again states that the entire right was purchased from Spalding. This letter relies on letter "K", supra, for the Raw assignment to Collins of 19 acres. In any event, the Collins Land Company files as submitted by appellant show that Collins Land Company was at least aware of the two parcels in 1918 and may well have had control of both.

right. In support thereof, he submitted an assignment to him from Raw and an assignment to Raw from one Clarke C. Gillis, both for 19 acres of the Swain right. In letter "K", June 18, 1925, the General Land Office, after describing the above facts and the three earlier selection applications, informed Collins that the entire chain of title would be necessary to validate the claim. Collins then withdrew the claim on the Swain right stating that the papers were "in the hands of other parties and it is not their desire or wish to file the same at this time."

The Swain right next appears in Department records when the Collins Land Company recorded 19 acres of it on August 5, 1957, pursuant to the Scrip Recordation Act, supra. (Misc. No. 76321.) However, when Collins Land Company filed selection application Oregon 018724 using this portion of the Swain right, it was rejected, among other reasons, because only two assignment papers were submitted (apparently the same two submitted in Helena 024026, supra.) This decision was upheld on appeal by the Branch of Land Appeals, Office of Appeals and Hearings, BLM, on April 26, 1967.

Appellant has submitted various documents from the Collins Land Company files in support of her claim. Among them is a copy of a letter dated January 28, 1922, from Collins Land Company to Brimmer and Brimmer of Rawlins, Wyoming. The letter states that it encloses a blank assignment from Ted E. Collins for 101 acres of the Swain right plus all the necessary assignment papers. We are unaware of any attempt by Brimmer and Brimmer, or any subsequent assignee, either to record this right or to use it as a basis for selection. Copies of further correspondence between Collins Land Company and Brimmer and Brimmer and between the Washington and Helena offices of Collins Land Company show that in 1930 Collins Land Company was considering re-acquiring this 101-acre right and that in 1942 it was finally determined that Brimmer and Brimmer did not know the whereabouts of the assignment papers. 2/

A copy of a July 8, 1942, letter from Ted E. Collins at the Helena office of Collins Land Company to Mary Breen at the Washington office of that company shows that Ted Collins was aware of the problem created by the missing papers. He states in part that "we might be able to get duplicate assignments which would be satisfactory to put the title to this 120 acres (we still have 19 acres here) in Ted E. C."

The remaining documents submitted by appellant consist of internal letters and memoranda which mention the Swain right (see footnote 1, supra), the correspondence from Evanston 06726, supra,

2/ Appellant states in her appear that a search of Brimmer and Brimmer's files was conducted on June 4, 1974, and again the papers were not located.

and a General Land Office decision rendered in a different soldier's additional right selection application. This decision, Helena 023066 (August 22, 1922), also involved loss of assignment papers. However, in that case affidavits were submitted by persons who had had actual possession of the papers setting forth the chain of title and stating that the papers were stolen and probably destroyed.

We have no such affidavits or other proof which could satisfactorily substitute for the actual assignment documents, such as statements from the assignors that they had assigned to the assignees in this case. Indeed, we have no information as to how, when, or if the right was transferred from Harriet E. Rockwell, the record holder in 1898, to Ted E. Collins, Clifford W. Raw or any of the other persons or companies referred to above. Appellant's alleged predecessors, Collins Land Company and Ted E. Collins, have been on notice since 1925 that a complete chain of title with all the assignment documents was necessary to establish a valid claim, but have not submitted such proof. At least by January 1922, and prior to any further assignments, Collins apparently possessed assignments of the entire Swain right and the papers in the chain of title. He then assigned only 101 acres of the Swain right and relinquished possession of the papers in the chain of title. He apparently retained two assignments relating to 19 acres of the Swain right, although such assignments have not been submitted by appellant.

[2] Appellant attempts to make much of the fact that no other person has recorded a selection right based on the Swain entry. This fact, however, does not help appellant. It certainly cannot serve as a substitute for proof of the actual assignments which are missing in the chain of title. This Department rejected two selection applications based on the 19-acre portion of the Swain right because of a failure to show a complete chain of title. Nothing that appellant has submitted on appeal supplies the deficiencies pointed out in the prior decisions. Because a complete chain of title of the soldier's additional homestead right from Swain to Margaret W. Chivers, the applicant for cash satisfaction of that right, cannot be shown, the purported assignment of the right cannot be recognized in the applicant, and the application must be rejected.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

